

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

APPEAL FROM ORDER NO.362 OF 2005
IN
NOTICE OF MOTION NO.1875 OF 2002
IN
SUIT NO.2321 OF 2002

Miranda Apartments Co-op. Housing
Society Ltd.

Appellant

vs.

Dadar Miranda Apartments Co-op.
Housing Society Ltd. & ors.

Respondents

Mr.Shyam Diwan with Mrs.Manek Joshi ib.M/s.M.M.Legal
Venure for the appellant.

Mr.Rajeev Matkar for the respondent no.1.

CORAM : B.H. MARLAPALLE,J.

DATED : 31st August 2005

P.C.

Heard the learned counsel for the respective
parties.

2. This appeal arises from an interlocutory order of temporary injunction passed by the learned Judge of the City Civil Court, Greater Mumbai on 1.10.2003.

3. This appeal was filed belatedly and delay was condoned by an order dated 4.3.2005. Consequently, the appeal came to be registered thereafter for the first time. The impugned order has not been stayed by this

Court for the last about 2 years and the restraint order passed is in respect of the open space with width of 5.1 mts., surrounding the building known as Dadar-Miranda Apartment till the disposal of the Suit. Dadar-Miranda apartment is the plaintiff and the present appellant is defendant no.3 in L.C.Suit No.2321/02. The defendants 1 and 2 are the builders of the society located on the plot admeasuring of about 1782 sq.yards part of survey no.85, Mahim Division, Veer Savarkar Marg (Final plot no.1176). The injunction order as granted by the trial Court is restraining the defendants from obstructing the plaintiffs use of the open space in respect of 5.1 mts. surrounding the building known as Dadar-Miranda Apartment till the disposal of the Suit. It is hereby clarified that the said restraining order does not mean that the members of the appellant-society are prevented from using the suit open space surrounding the building known as Dadar-Miranda Apartment and the said open space will have to be available for the use of the members of both the societies during the pendency of the Suit.

4. The appeal is disposed of in terms of the above clarification. Trial of the Suit is expedited.

(B.H. MARLAPALLE,J.)